

**M e m o r a n d u m****170.0190**

**To:** Mr. Rick Slater  
Supervisor of Collections - MIC:55

**Date:** October 15, 1993

**From:** Thomas Cooke, Tax Counsel  
Legal Division - MIC:82

**Subject:** The M--- Company  
Account No. SR -- XX-XXXXXX

The taxpayer has written a letter to Warren Klomp dated July 19, 1993 in which the taxpayer states that the Board did not lien the assets and property of the M--- Company. The taxpayer claims that the only lien ever recorded against the M--- Company was released on March 23, 1987. The taxpayer contends that since, without the 10-year life span of a lien, the three-year statute of limitations applies. Taxpayer therefore requests a refund of all moneys paid to the Board after the expiration of the three-year statute of limitations.

The taxpayer's letter and other materials has been referred to the Legal Division for an opinion.

Initially, it appears that on January 23, 1987, a Notice of State Tax Lien was recorded in the California Secretary of State's office. Another copy of this Notice of State Tax Lien was then recorded in the Los Angeles Recorder's office on January 27, 1987. On March 27, 1987, a Release of Lien was recorded in the Los Angeles Recorder's office. The file does not show that the Notice of Tax Lien filed in the California Secretary of State's office was ever released.

Revenue and Taxation Code section 6757 provides that if any person fails to pay any amount imposed under the California Sales and Use Tax Law at the time that it becomes due and payable, the amount shall thereupon be a perfected and enforceable state tax lien. For non-jeopardy determinations, "due and payable" means the date that the determination becomes final. Revenue and Taxation Code section 6757 states that a state tax lien is subject to the provisions of Government Code section 7150 et ff.

Government Code section 7172 provides that a state tax lien continues in effect for 10 years from the date of its creation unless it is sooner released or otherwise discharged, and is extinguished 10 years from the date of its creation unless a Notice of State Tax Lien is recorded or filed. When a Notice of a State Tax Lien is recorded or filed, the lien continues in effect for 10 years from the date of recording or filing. The recorded or filed lien is then extinguished unless a new Notice of State Tax Lien is recorded or filed for another 10-year period.

It is the opinion of the Legal Division that no refund is due to the taxpayer on any payments made by the taxpayer to the Board within a 10-year period after the tax liability became "due and payable." If a Notice of State Tax Lien was filed with the Secretary of State's office (and was not released), no refund is due to the taxpayer on payments made to the Board within a 10-year period after the tax liability became "due and payable" or within a 10-year period after the Notice of State Tax Lien was filed.

TJC:plh

cc: Mr. Gordon Adelman - MIC:82  
Petitions Section - MIC:38  
Refunds Section - MIC:39

Mr. Rick Slater

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bc:     Arcadia District Administrator - AP